IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07/04/2003

CORAM

THE HONOURABLE MR. JUSTICE P.D.DINAKARAN

W.P.No.16996 of 1999

G.Ramakrishnan .. Petitioner

-Vs-

1. The Zonal Manager
Bank of India
Zonal Office, Souther Zone
No.46, Cathedral Road
Chenna-86.

2. The Chief Regional Manager
Bank of India
Regional Office, Plot No.3
Vaigai Colony, Anna Nagar
Madurai-625 020.

3. The Manager
Bank of India
No.9, East Avani Moola Street
P.B.No.208
Madurai-625 001.

4. The Revenue Divisional Officer
Revenue Divisional Office
Madurai-625 020. .. Respondents

PRAYER: Petitions under Article 226 of the Constitution of India for issue of a writ of Certiorarified Mandamus as stated therein.

For Petitioner : Mr.V.Illanchezian

For Respondents : Mr.N.Balasubramanian
for respondents 1 to 3
Mr.P.Chandrasekaran
Spl. Govt. Pleader for R4

:ORDER

Aggrieved by the proceedings dated 17.8.1999 issued by the fourth respondent, requiring the petitioner to appear before him on 27.8.1999 with

all relevant records and documentary evidence for an enquiry to be held with respect to the community certificate of the petitioner issued on 29.4.1981 by the Tahsildar, Madurai South, the petitioner seeks a writ of Certiorarified Mandamus to call for the records relating to Na.Ka.En.K.8800/99, dated 17.8.1999 on the file of the fourth respondent, quash the same and to consequently direct the respondents 1 to 3 not to initiate any proceedings or any reference to send the petitioner for the verification of the community certificate.

2. According to the petitioner, he belongs to Kattunayakan community and he had already been issued a certificate dated 29.4.1981 by the Tahsildar, Madurai South, certifying that he belongs to Kattunayakan community, based on which he joined the service in the Bank of India, viz., respondents 1 to 3 (hereinafter referred to as the 'employer'). The fourth respondent, however, by proceedings dated 17.8.1999, impugned in this writ petition, proposed to

hold an enquiry to verify the community of the petitioner and required him to appear before him with all relevant records and documentary evidence. Hence, the above writ petition.

3. The learned counsel for the petitioner challenges the impugned proceedings of the fourth respondent dated 17.8.1999 mainly on the ground that the fourth respondent has no jurisdiction and it is only the District Level Caste Scrutiny Committee which can go into the verification of the community certificate of the petitioner.

4. Per contra, Mr.P.Chandrasekaran, learned Special Government Pleader appearing for the fourth respondent, based on the averments stated in the counter affidavit, submits that the petitioner is not aggrieved by the impugned proceedings dated 17.8.1999 at all, as the fourth respondent only proposed to hold a preliminary enquiry for the verification of the community certificate of the petitioner and if the records and evidence required to be produced by the petitioner are not satisfactory, the matter would be referred to District Level Caste Scrutiny Committee, and therefore, the grievance of the petitioner that the fourth respondent has no jurisdiction to issue notice is totally unsustainable in law and the very filing of the writ petition is premature in nature.

5.In addition to the submissions of the learned Special Government Pleader, Mr.N.Balasubramanian, learned counsel appearing for the employer, namely respondents 1 to 3, submits that the petitioner is not entitled to claim that he belongs to Kattunayakan community because, the community certificate of one Gurusamy, who is nonetheless the father of the petitioner, that he belongs to Kattunayakan community, was ultimately cancelled by the competent authorities, and the cancellation of community certificate of the father of the petitioner, was also confirmed by the Apex Court in THE STATE OF TAMIL NADU Vs. A. GURUSAMY reported in JT 1997 (3) SC 346. The learned counsel for the employer contends that since the father of the petitioner no more belongs to Kattunayakan community, the petitioner is not entitled to claim that he belongs to Kattunayakan community.

6. I have given careful consideration to the submissions of both sides.

7. This is a typical case where the petitioner seeks the interference of this Court, on pure technical grounds, to perpetrate fraud on the Constitutional rights. The Apex Court, time and again, discouraged any misplaced sympathy shown on spurious persons who come forward and obtain the benefit of reservation rights which are meant only to the persons who are notified under the Constitution (Scheduled Tribes) Order, 1950.

8. In MADHURI PATIL Vs. ADDL. COMMR. TRIBAL DEVELOPMENT reported in AIR 1995 SC 94, the Apex Court, while dealing with the rights of the Scheduled Tribes under the Constitution, has held as under:

"The Preamble to the Constitution promises to secure to every citizen social and economic justice, equality of status and of opportunity assuring the dignity of the individual. The Scheduled Tribes are inhabitants of intractable terrain regions of the country kept away from the mainstream of national life and with their traditional moorings and customary beliefs and practices, they are largely governed by their own customary code of conduct regulated from time to time with their own rich cultural heritage, mode of worship and cultural ethos. The Constitution guarantees to them, who are also Indian citizens, equality before law and the equal protection of law. Though Articles 14 and 15(1) prohibit discrimination among citizens on certain grounds, Article 15(4) empowers the State to make special provisions for advancement of Scheduled Castes and Scheduled Tribes. Article 16(1) requires equality of opportunity to all citizens in matters of appointments to an office or a post under the Union or a State Government or public undertakings etc. But Article 16(4) empowers the State to make provision for reservation of appointments or posts in favour of classes of citizens not adequately represented in the services under the State. Article 46 enjoins the State by mandatory language employed therein, to promote with special care the educatio nal or economic interest of the Scheduled Tribes and Scheduled Castes and to protect them from " social injustice" and "all forms of exploitation". Article 51-A(h) enjoins every citizen to develop scientific temper, humanism and the spirit of inquiry and reform. Again Article 51-A(h) requires every citizen to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement. It is, therefore, a fundamental duty of every citizen to develop scientific temper and humanism and spirit of inquiry to reform himself in his onward thrust or strive to achieve excellence in all spheres of individual and collective activity. Since the Scheduled Tribes are a nomadic class of citizens whose habitat being generally hilly regions or forests, results in their staying away from the mainstream of the national life. Therefore, the State is enjoined under our Constitution to provide facilities and opportunities for development of their scientific temper, educational advancement and economic improvement so that they may achieve excellence, equality of status and live with dignity. Reservation in admission to educational institutions and employment are major State policies to accord to the tribes, social and economic justice apart from other economic measures. Hence, the tribes, by reason of State's policy of reservation, have

been given the exclusive right to admission into educational institutions or exclusive right to employment to an office or post under the State etc. to the earmarked quota. For availment of such exclusive rights by citizens belonging to tribes, the President by a notification specified the Scheduled Tribes or tribal communities or parts of or groups of tribes or tribal commu nities so as to entitle them to avail of such exclusive rights. The Union of India and the State Governments have prescribed the procedure and have entrusted duty and responsibility to Revenue Officers of gazetted cadre to issue social status certificate, after due verification. It is common knowledge that endeavour of States to fulfil constitutional mandate of upliftment of Scheduled Castes and Scheduled Tribes by providing for reservation of seats in educational institutions and for reservation of posts and appointments, are sought to be denied to them by unscrupulous persons who come forward to obtain the benefit of such reservations posing themselves as persons entitled to such status while in fact disentitled to such status. "

9. The Constitution Bench of the Apex Court in STATE OF MAHARASHTRA Vs. MILIND reported in (2001) 1 SCC 4 held that certain privileges and benefits are conferred on such people belonging to Scheduled Tribes by way of reservations in admission to educational institutions (professional colleges) and in appointments in services of State, in order to protect and promote the less fortunate or unfortunate people who have been suffering from social handicap, educational backwardness besides other disadvantages. The object behind such constitutional right is noble and laudable besides being vital in bringing a meaningful social change. The Constitution Bench has further observed that if these benefits are taken away by those for whom they are not meant, the people for whom they are really meant or intended will be deprived of the same and their sufferings will continue. Therefore, it was held that allowing the candidates not belonging to Scheduled Tribes to have the benefit or advantage of reservation either in admissions or appointments leads to making mockery of the very reservation against the mandate and the scheme of the Constitution.

10. It is, therefore, clear that the claim of the petitioner's father himself that he belongs to Kattunayakan community was ultimately rejected by the authorities and the same was also confirmed by the Apex Court in THE STATE OF TAMIL NADU Vs. A.GURUSAMY, referred supra. The contention of A.Gurusamy, father of the petitioner herein, that he may be permitted to enjoy the status of Scheduled Tribe from the year 1971 was strongly condemned by the Apex Court. A reference to the said observation of the Apex Court, in this regard, would be apposite:

"... It is then contended that the respondent has been given the right to enjoy the status right from 1971 and, therefore, the principle of estoppel applies to him. We find that it has no force. It is a fraud played on the Constitution. A person who plays fraud and obtains a false certificate cannot plead estoppel. The principle of estoppel arises only when a lawful promise was made and acted upon to his detriment; the party making promise is estopped to resile from the promise. In this case, the principle of estoppel is inapplicable because there is no promise made by the State that the State would protect perpetration of fraud defeating Constitutional objective; no

promise was made that his false certificate will be respected and accepted by the State. On the other hand, he is liable for prosecution. The courts would not lend assistance to perpetrate fraud on the Constitution and he cannot be allowed to get the benefit of the fraudulent certificate obtained from the authorities. The declaration issued by the courts below is unconstitutional and without jurisdiction."

11. Since it is not disputed by the learned counsel for the petitioner that the petitioner is the son of the said Gurusamy, I wonder how the petitioner still claims that he belongs to Kattunayakan community.

12. At this juncture, the learned counsel for the petitioner brought to my notice the order of this Court dated 3.1.2003 in W.P.No.26471 of 2001 filed by the brother of the petitioner herein. In the said writ petition (W.P.No.26471/2001), when an action was sought to be initiated against the brother of the petitioner herein by the Revenue Divisional Officer, Madurai, namely the first respondent therein, the same was challenged on the ground that the Revenue Divisional Officer was ceased with the jurisdiction and it is only the District Level Caste Scrutiny Committee which could go into the verification of the community certificate. It is very unfortunate to note that the learned Government Advocate concerned had not brought to the notice of the Court that the petitioner therein is also the son of Gurusamy, who was already declared as not belonging to Kattunayakan community by the authorities and the same was confirmed by the Apex Court. It is under such circumstances, W.P.No.26471 of 2001 was disposed of by this Court by order dated 3.1.2003, leaving the matter to the State Level Caste Scrutiny Committee, without any reference to the above observations of the Apex Court.

13. Be that as it may, I find reasons in the submissions of both the learned counsel for the respondents that the petitioner is not at all aggrieved by the impugned proceedings of the fourth respondent dated 17.8.1999, more particularly in the light of the decision of the Apex Court in THE STATE OF TAMIL NADU Vs. A.GURUSAMY, referred supra, held against his father. Hence, I do not see any reason or justification to quash the impugned proceedings dated 17.8.1999, except to permit the petitioner to appear on the immediate next date of hearing, which shall be intimated to the petitioner by the fourth respondent, with all relevant records and documentary evidence, if he is so advised, based on which, the fourth respondent shall arrive at a preliminary finding. If the petitioner fails to produce satisfactory evidence that he belongs to Kattunayakan community, the matter shall be forwarded to the District Level Caste Scrutiny Committee, which shall hold an enquiry giving a fair and reasonable opportunity to the petitioner, and pass appropriate orders, on merits, within ninety days from the date of receipt of the preliminary report of the fourth respondent. A copy of the preliminary report of the fourth respondent shall also be furnished to the petitioner.

14. Pending such final decision in the matter, the respondents 1 to 3 shall not consider the petitioner for any future promotion which is meant only for Scheduled Tribe candidates.

This writ petition is dismissed with the above direction. No costs.

Index : Yes
Internet : Yes

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To:

1. The Revenue Divisional Officer
Revenue Divisional Office
Madurai-625 020.